217

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39493-2023
Date of decision : 25.09.2023

MOHIT KUMAR MANIHAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Anoop Verma, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

****

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.24 dated 18.06.2023 registered under Sections 419, 420, 120-B IPC (Sections 467, 468, 471 IPC added later on) at Police Station Cyber Crime, District Palwal, District Palwal, Haryana.

2. The present FIR came to be registered at the instance of Bhuvnesh Sharma who stated that a few days earlier, he had joined a WhatsApp Group by the name of 'The Wine Group'. One Pushpa told him about an investment plan. In furtherance of the same, he (complainant) got deposited Rs.90,000/- through UPI. The first time, he was given the UPI ID of 'Shree Traders 162' in which he deposited Rs.55,000/- on 28.05.2023 whereas the second time he was given the UPI ID of 'Kalpana 5940 PNB' in which he made a deposit of Rs.35,000/-. On being asked to return his money, they asked him for

Rs.20,000/- more. It was then that he got to know that he had became a victim of online fraud. On this, information was furnished to the police and legal was sought.

Pursuant to the registration of the FIR which had been initially registered against Pushpa, it was found that the first amount of Rs.55,000/- was deposited in Account No.0130002111042214 with the PNB Branch at Paharganj, Delhi in the name of 'Shree Ram Traders'. Thereafter, Rs.35,000/- was found deposited in Account No.4091002100016819 with the PNB Branch at Rajsamand, Rajasthan in the name of Kalpana Enterprises the proprietor of which was Anand Shah. Mobile Nos.9076373137, 6376111438 and 8690899768 were found registered and linked with the account number. The Customer Application Forms (CAFs) of these three numbers were obtained and were found in the name of Manoj son of Aasmal Sanghvi, resident of Devgarh, Rajasthan.

On 19.06.2023, the accused Manoj son of Aasmal Sanghvi @ Amit Bhahrumal Jain resident of Sanjan Taluka Umargaon, District Balsad, Gujarat was arrested. During his search, a mobile phone with IMEI No.1-869296066243977/00 and No.2-86929606243969/00 and SIM No.8690899768 were recovered from him. During interrogation, he admitted to have committed the offence and stated that he had purchased a car from the amount which had come to his share. Pursuant thereto, he got recovered his Honda Amaze Car bearing No.MH 04GZ 5875 which was taken into possession. He also got recovered one Samsung mobile phone with IMEI No.1-355415104612503/01 and No.2-

355416104612501/01 and SIM No.6376111438. On the basis of his disclosure statement and the other evidence the offence punishable under Sections 467, 468, 471 of IPC were added on 20.06.2023.

In his supplementary disclosure statement dated 21.06.2023, he disclosed about the entire sequence of events besides disclosing the names of his co-accused as Mohit Kumar Manihar (petitioner) son of Ashok Kumar, resident of Devgarh Rajsamand, Rajasthan, Devinder Soni son of Nirmal Kumar, Nitesh Soni son of Arjun Lal Soni both residents of Shivpur, P.S. Bheem, Rajasthan and Anand Shah son of Manubhai Shah, resident of Warli, Mumbai.

As per the disclosure statement of Amit Bharumal Jain @ Manoj, he had got prepared a false Aadhaar Card in the name of Manoj bearing No.759568068507 and he along with the present petitioner had got opened a current account of Anand Shah, proprietor of Kalpana Enterprises. On 25.05.2023, the petitioner had delivered the user ID and Mobile No.9076373137 to Nitesh Soni for the purpose of opening a current account and this mobile number was linked and registered with Account No.4091002100016819 with the PNB Bank. The call detail record of Mobile No.9076373137 and mobile number of the petitioner i.e. 9414786323 were obtained on 25.05.2023. As per CDR, they were found at the place of occurrence i.e. Khakhla, Rajasthan. Apart from this, Mobile No.7619106744 of co-accused Nitesh Soni was also found working at the same location on 25.05.2023 i.e. Khakhla, Rajasthan.

As per bank records, Account No.4091002100016819 with the PNB Bank was in the name of Anand Shah-Kalpana Enterprises and was opened on 17.05.2023 on which date the location of Mobile No.9414786323 of the present petitioner was found at Kakroli Rajsamand, Rajasthan.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. As per the FIR, no overt or covert act has been attributed to him. He has been implicated only upon the disclosure statement of his co-accused in police custody which is inadmissible in evidence. There was no evidence to show that any money was paid to the petitioner at any stage by the complainant. In fact, the petitioner had only rented out one room in his residential premises to Anand Shah on the asking of Amit Jan vide agreement dated 08.05.2023 at the rent of Rs.6000/- per month and it is only now that it had come to his knowledge that Anand Shah had got registered his business on the said rented property and that is how the prosecution was connecting the petitioner with the offence. He, therefore contends that the petitioner was entitled to the concession of anticipatory bail.

4. On the other hand, the learned State counsel contends that during the course of investigation, it has come to light that one Manoj and the petitioner had got opened a current account of Anand Shah, Proprietor of Kalpana Enterprises. The petitioner had delivered the user ID and Mobile No.9076373137 to Nitesh Soni for the purpose of opening the current account and this mobile number is linked and registered with Account No.4091002100016819 with the PNB. In fact, the petitioner was running a syndicate of cyber criminals and amount of Rs.37 crores was deposited in Account No.4091002100016819 just in

three days which was got opened by the present petitioner in the name of Anand Shah. He, therefore, contends that as offences of the present kind were on the rise, no ground for the grant of anticipatory bail was made out as the commission of the offence was *prima facie* established.

5. I have heard the learned counsel for the parties at length.

6. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** ***<u>2022 Live Law (SC) 870</u>*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

> "*It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*
>
> *Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.*
>
> *We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting*

> *anticipatory bail to the accused should be quashed and set aside.* ***In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail***.

7. Coming back to the facts of the present case, as per investigation conducted so far, it was the petitioner and Manoj @ Amit Bhahrumal Jain who had got opened a current account of Anand Shah, Proprietor of Kalpana Enterprises in which account, Rs.37 crores were found deposited in three days. Therefore, the offence is *prima facie* established against the petitioner. Even otherwise, the investigation cannot be scuttled and therefore, the custodial interrogation of the petitioner is certainly required to take the same to its logical conclusion.

8. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.

9. However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

25.09.2023
JITESH